

United States Courts
Southern District of Texas
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Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re ENRON CORPORATION SECURITIES
LITIGATION

§ Civil Action No. H-01-3624
§ (Consolidated)

This Document Relates To:

MARK NEWBY, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

ENRON CORP., et al.,

Defendants.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, et al., Individually and On
Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

KENNETH L. LAY, et al.,

Defendants.

CLASS ACTION

**LEAD PLAINTIFF'S OPPOSITION TO CERTAIN
OFFICER DEFENDANTS' MOTION TO DISMISS THE
FIRST AMENDED COMPLAINT**

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I. INTRODUCTION

The Certain Officer Defendants' Motion to Dismiss First Amended Complaint ("Motion") reasserts many arguments the Court has rejected once, and often twice. Rather than addressing only the *new* allegations as instructed, the Officer Defendants recycle failed arguments. The Officer Defendants disregard the Court's April 22, 2003 Order, which permits motions to dismiss to be filed to "*challenge the sufficiency of any new allegations.*"¹ *Id.* at 5.

Although the Officer Defendants concede their Motion merely "reprise[s]" and repeats their previous arguments, they implore the Court to "consider again" their failed arguments. Motion at 2. "The survival of claims against all *current* Defendants in the consolidated actions beyond the initial round of motion to dismiss," wrote the Court, "*has established that Lead Plaintiff has stated claims against each one of them and is entitled to go forward.*" June 27, 2003 Order at 3. The Officer Defendants have exhausted their options for having this case dismissed under Rule 12, and now it is time to proceed.

The Officer Defendants repeat their arguments that the First Amended Complaint relies on group and position pleading. Details about the Officer Defendants' positions are just a small component of the overall scienter allegations. The First Amended Complaint includes specific facts about the Officer Defendants' involvement with Enron's core businesses, risk management, illicit SPEs and partnerships, and the fraudulent off-balance-sheet transactions Enron used to conceal its debt and inflate its earnings. The Officer Defendants, moreover, reassert their displeasure with the Court's description of allegations concerning Enron's Management Committee. The Court rejected these arguments in its Order addressing the motion for reconsideration of Mark Frevert, Steven J.

¹ In its July 14, 2003 Scheduling Order, the Court again signaled the time for re-argument is over:

IN ALL AMENDED PLEADINGS, COUNSEL SHALL NOT REITERATE ALLEGATIONS OR ARGUMENTS PREVIOUSLY REJECTED BY THIS COURT IN RULINGS ON MOTIONS TO DISMISS THE CONSOLIDATED COMPLAINTS.

Id. at 4. Other than Ken Harrison, no individual defendant has re-urged his motion to dismiss. These other defendants, we believe, understand the Court has already ruled on the allegations in both the Consolidated Complaint and the First Amended Complaint. Here, as elsewhere, emphasis is added and citations are omitted unless otherwise noted.

Kean, Mark Koenig, Cindy Olson and Lawrence Greg Whalley. These decisions are now the law of the case and should govern the outcome of this Motion.

The Officer Defendants request the Court's "indulgence" to consider "plaintiff's inaction" in supplementing its pleading as ordered. Motion at 3. This is the Officer Defendants' sole new argument, but it too fails. Where specifically instructed to amend its complaint, Lead Plaintiff did as the Court directed, save for an oversight with respect to defendant Buy. This innocent mistake has been corrected by a proposed amended pleading.

The Officer Defendants' latest attempt to dismiss the allegations against them, the *third* for Frevert, Kean, Koenig, Olson and Whalley, only squanders more litigant and judicial resources. Their Motion should be denied, not because of some mythical "Enron exception to the PSLRA," Motion at 2, but because the allegations plead a compelling case of fraud against the Officer Defendants.

II. LEAD PLAINTIFF SUPPLEMENTED ITS COMPLAINT IN ACCORDANCE WITH THE COURT'S ORDERS

A. The Court Never Required Lead Plaintiff to Supplement its Allegations Against the Majority of the Officer Defendants

The Officer Defendants accuse Lead Plaintiff of ignoring the Court's command to supplement its complaint. Not so. Lead Plaintiff amended its allegations where instructed to do so. Speaking of Olson, the Court stated: "In the interests of justice, the Court sees no reason why Lead Plaintiff should not be allowed to supplement its complaint" to add "telling" factual allegations regarding Olson's stock sales and history as an accountant, allegations which "add to a strong inference of scienter." March 25, 2003 Order at 12. The Court also directed Lead Plaintiff to replead or drop its Texas Securities Act ("TSA") claims against Buy and Causey. *See* April 24, 2003 Order at 5, 13, 24. The First Amended Complaint includes these allegations against Olson and revised TSA claims. ¶¶83q.1-5, 1016.25-28.

To evade responsibility for their securities fraud, the Officer Defendants contend the Court inferred allegations not in the Consolidated Complaint and implicitly "invited" Lead Plaintiff to conform the First Amended Complaint to its prior decisions.² Motion at 1.

1. McMahon

For example, the Officer Defendants claim the Court found the allegations against McMahon inadequate but denied his motion to dismiss based on extraneous material. Motion at 26. "Implicit in the Court's discussion," they allege, "was an obligation" to plead additional information. *Id.* The Court, however, *never* indicated the allegations regarding McMahon were in any way deficient or required amendment. *See* April 24, 2003 Order at 29-32.

The Consolidated Complaint pleaded ample facts demonstrating McMahon's securities fraud. Sherron Watkins's letter, for example, reported:

There is a veil of secrecy around LJM and Raptor. Employees question our accounting propriety consistently and constantly....

- a. Jeff McMahon was highly vexed over the inherent conflicts of LJM. ***He complained mightily to Jeff Skilling*** 3 days later, Skilling offered him the CEO spot at Enron Industrial Markets

¶850. Allegations of Enron creating illicit SPEs to "monetize" assets by moving them off Enron's books "link[ed] McMahon to significant acts or practices in the course of Enron's business that operate a fraud on investors and as deceptive devices and contrivances in furtherance of the Ponzi scheme in connection with the sale or purchase of securities." April 24, 2003 Order at 31; *see also* ¶708. These allegations, coupled with his insider trades, raised a strong inference that McMahon committed securities fraud. *See* April 24 Order at 37. Further, it was proper for the Court to judicially note McMahon worked at Arthur Andersen before coming to Enron. After all, this placed McMahon's misconduct within "the total context." 235 F. Supp. 2d at 688.

² The Officer Defendants also argue Lead Plaintiff's purported failure to include details of PowerPoint presentations and skits lampooning Enron's dubious business practices somehow demonstrates an intent not to plead allegations on which the Court relied. Motion at 18-19. In taking notice of this information, the Court was simply viewing Lead Plaintiff's allegations "in the total context," *In re Enron Corp. Sec.*, 235 F. Supp. 2d 549, 688 (S.D. Tex. 2002), rather than instructing Lead Plaintiff to include these materials in an amended pleading. *See also* April 22, 2003 Order at 5 ("while the Court has referenced various media accounts and information publicized about Congressional investigations of Enron in several of its orders, it has done so as these reports ***relate to and are consistent with allegations made by Lead Plaintiff***").

The Court also upheld the control person allegations against McMahon based on the allegations in the Consolidated Complaint. The Court explained, "[h]is position as Treasurer, his seat on the Management Committee, his accounting expertise, and his personal knowledge from creating the ... fraudulent SPEs demonstrate that he had the power to control Enron's policies and business." April 24, 2003 Order at 32. The Court's ruling regarding McMahon is clear.

2. Causey

Like McMahon, Causey mistakenly claims the Court denied his motion to dismiss "on the expectation that Lead Plaintiff would amend or supplement its allegations against [him] to include the same allegations from extraneous sources that the Court relied upon." Motion at 23. Lead Plaintiff alleges Causey knew about the "snowballing" of expenditures related to Enron's international projects. *See* April 24, 2003 Order at 28. Paragraph 121(f) of the Consolidated Complaint (and now the First Amended Complaint) pleads "the 'snowball' grew exponentially – so large that an international accounting officer repeatedly told *Enron's CAO Causey* that a writedown had to be taken because so many proposals were no longer even arguably viable.... *Causey*, at Skilling's direction, routinely responded that 'corporate didn't have room' to take a write-off because doing so would bring Enron's earnings below expectations." *Id.*; *see also* April 24, 2003 Order at 28. Yet Causey still signed Enron's SEC filings though they understated Enron's expenses.³ ¶¶126, 134, 141, 155(k).

Causey also served with Ken Lay and Lou Pai as officers and directors of NewPower, and served with Andrew Fastow and Ben Glisan as officers or directors of Atlantic Water Trust and Egret, vehicles used by Enron and its insiders to facilitate the fraudulent scheme. ¶¶83(hh)-(ii). He signed the documentation for transactions involving Enron and "Talon," one of the Raptors. ¶480. "Causey's personal involvement in the entities at the core of the alleged Ponzi scheme was," explained the Court, "substantial and dubious in light of his obligations to the board and the shareholders and his accounting expertise." April 24, 2003 Order at 29. Amendment was unnecessary for Causey.

³ These allegations refute the Officer Defendants' claim, "There are *no* alleged misstatements attributed to any one individual Officer Defendant." Motion at 7.

Causey's objections to the Court taking judicial notice of his financial experience and expertise from newspaper reports lacks merit. Motion at 23-24. Causey questions the accuracy of the *New York Times* articles the Court cites due to revelations regarding former reporter Jayson Blair. Motion at 24 n.17. This argument is meritless. The Court has not judicially noticed facts from a Blair article. Causey also criticizes the Court for overlooking sympathetic statements in newspaper articles such as he was "pleasant and kind," "friendly and unpretentious" and "a nice guy, but he did not like to fight; he was not a bully." Motion at 24. These *opinions* are not subject to judicial notice.⁴

3. Other Defendants

The Court never directed Lead Plaintiff to supplement its allegations against Frevert, Kean, Koenig, McMahon, or Whalley, or the federal allegations against Causey or even "invited" an amendment. The Officer Defendants simply misread the Court's orders. Indeed, in denying the motion for reconsideration of Frevert, Kean, Koenig, Olson, and Whalley, the Court declared it "cannot help but find that a strong inference exists of actual knowledge or reckless disregard on the part of these Defendants arising from Lead Plaintiff's complaint." April 22, 2003 Order at 8.

The Officer Defendants are disingenuous in claiming "[Lead] Plaintiff has made no effort to incorporate any of the statements in the Powers Report" into the First Amended Complaint. *See* Motion at 27. The Court only required Lead Plaintiff to "file a copy of the Powers Report to make it part of this record," which Lead Plaintiff has done.⁵ *See* April 24, 2003 Order at 16.

B. Lead Plaintiff's Proposed Supplemental Pleading Renders Buy's Motion Moot

Although Lead Plaintiff mistakenly failed to amend its allegations against Buy, this innocent omission has been corrected through the submission of a proposed amended pleading (attached

⁴ Causey also views it significant he is no longer identified, at least by position, as a participant with Fastow in the Enron fraud. Motion at 25. This proves nothing. A grand jury has already concluded the Enron CAO, who was Causey, ¶83(d), participated in the scheme to defraud.

⁵ McMahon baldly asserts the "statements in the Powers Report do not support a fraud claim against [him]." Motion at 27 n.19. The Powers Report discloses McMahon approached Jeff Skilling in March 2000 *with serious concerns about Enron's dealings with the LJM Partnerships*, the *same month* in which his insider selling took place. *See* Plaintiffs' Memorandum in Opposition to Motions to Dismiss of Enron Individual Defendants at 57.

hereto as Ex. A), which adds those allegations the Court noted in its April 22 Order. Buy, confronted with substantial allegations of conscious wrongdoing, now attempts to evade responsibility for his fraud by arguing Lead Plaintiff has "declined the Court's invitation" to amend its allegations against him. Motion at 19-20. Nothing in the record suggests Lead Plaintiff has deliberately abandoned claims the Court has already upheld. Indeed, when the Court granted "leave to Lead Plaintiff to amend/supplement its complaint to add these allegations" against Buy, it also directed it to "file a copy of the Powers Report to make it part of this record." April 24, 2003 Order at 16. As ordered, Lead Plaintiff has filed a copy of the Powers Report in this case, as even Buy concedes. *See* April 24, 2003 Order at 16; Motion at 21. Mere oversight should not obviate Buy's liability for securities fraud. The Court should accept the proposed pleading and deny Buy's motion to dismiss the claims against him.

III. THE LAW OF THE CASE PRECLUDES REEXAMINATION OF OFFICER DEFENDANTS' RECYCLED ARGUMENT

By its Orders of March 25, April 22 and 24, the Court denied, *at least once*, the Officer Defendants' motions to dismiss. These decisions are now the law of the case and "should continue to govern the same issues in subsequent stages in the same case." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988). The law of the case doctrine promotes finality and efficiency by "protecting against the agitation of settled issues," as the Officer Defendants attempt to do here. *Id.* Its principles "are a matter of practice that rests on good sense and the desire to protect both court and parties against the burdens of repeated reargument by indefatigable diehards." 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure* §4478 (2002).⁶ In the Fifth Circuit, a decision establishes law of the case absent manifest error or

⁶ *See, e.g., In re Resyn Corp.*, 945 F.2d 1279, 1281 (3d Cir. 1991) ("The doctrine of the law of the case dictates that 'when a court decides upon a rule of law, that rule should continue to govern the same issues in subsequent stages in the litigation.'"). *See also Copeland v. Merrill Lynch & Co.*, 47 F.3d 1415, 1423 (5th Cir. 1995) (same); *James v. City of Dallas*, No. 3:98-CV-0436-R, 2001 U.S. Dist. LEXIS 6772, at *12-*13 (N.D. Tex. May 22, 2001) ("This court has previously denied the City's motion to dismiss Plaintiffs' claim on statute of limitations grounds in a hearing on October 7, 1999. This is the law of the case, and the end of the issue. The Court therefore denies City's motion to dismiss based upon the statute of limitations.").

intervening change in the law. *See Carnival Leisure Indus. v. Aubin*, 53 F.3d 716, 718 (5th Cir. 1995). The Officer Defendants can show neither.

The Officer Defendants waste considerable ink rearguing the controlling standard of law. The Court has *already* examined all but one of the cases the Officer Defendants cite, the recent *Rosenzweig v. Azurix Corp.*, No. 02-20804, 2003 U.S. App. LEXIS 11685 (5th Cir. June 13, 2003) decision. The Court followed Fifth Circuit precedent in *Abrams v. Baker Hughes, Inc.*, 292 F.3d 424 (5th Cir. 2002), *Nathenson v. Zonagen, Inc.*, 267 F.3d 400 (5th Cir. 2001), and *ABC Arbitrage v. Tchuruk*, 291 F.3d 336 (5th Cir. 2002), in addressing the sufficiency of Lead Plaintiff's allegations. *See Enron*, 235 F. Supp. 2d at 571-77. It applied the controlling standard for pleading scienter, stating:

To survive a motion to dismiss, the plaintiff must plead specific facts with particularity giving rise to a "strong inference" of scienter. Circumstantial evidence may be used to give rise to a strong inference of scienter. Rather than a piecemeal analysis, this court must view the totality of alleged facts and circumstances, together as a whole, to determine whether they raise the requisite strong inference of scienter.

Allegations of motive and opportunity to commit fraud, by themselves, are generally insufficient to plead scienter in the Fifth Circuit, but may be employed along with other facts and circumstances to reach the level of severe recklessness.

Id. at 571-72 (citing *Abrams* and *Nathenson*). The Officer Defendants ignore the Court's copious review of controlling precedent.

Rosenzweig does not conflict with the Court's decisions in this case, as the Officer Defendants contend. Motion at 6-7. In *Rosenzweig*, unlike here, there was no allegation defendants sold any stock, "calling into question the alleged motive to artificially inflate the stock price." 2003 U.S. App. LEXIS 11685, at *29. The scienter allegations in *Rosenzweig* centered around a document created "well after the alleged misrepresentations and omissions." *Id.* at *30. And, unlike here, where pleadings are "remarkably detailed in light of the fact that [they were] rapidly drafted without benefit of discovery," April 22, 2003 Order at 3, the Fifth Circuit found the allegations concerning the reports in *Rosenzweig* were "not sufficiently particular." 2003 U.S. App. LEXIS 11685, at *31.

There has been no showing of a manifest error by the Court, nor has there been an intervening change in the law. The Court's prior orders sustaining the claims against the Officer Defendants should stand. *See, e.g.*, June 27, 2003 Order at 3.

IV. LEAD PLAINTIFF'S NEW ALLEGATIONS STRENGTHEN THE STRONG INFERENCE OF SCIENTER AGAINST THE OFFICER DEFENDANTS

A. McMahon

McMahon ignores the compelling new allegations of fraud against him. Motion at 26-28. During 1999, McMahon approached investment bankers about acquiring Nigerian barges at a profit to Enron with the promise that "we'll make sure you'll get taken out" in the first half of 2000. ¶742.8. Enron needed to engage in a sham transaction to take the barges off its hands just long enough for it to book a profit in 1999, at which point it could buy back the barges as the project completed. *Id.* McMahon pitched the sham deal to Merrill Lynch investment banker Robert Furst, and Furst and Schuyler Tilney championed the deal at Merrill Lynch. ¶742.9 However, Merrill Lynch's internal Appropriation Request for Furst states:

Jeff McMahon, EVP and Treasurer of Enron Corp. has asked ML to purchase \$7MM of equity in a special purpose vehicle that will allow Enron Corp. to book \$12MM of earnings. Enron must close this transaction by 12/31/99. Enron is viewing this transaction as a bridge to permanent equity and they have assured us that we will be taken out of our investment within six months. The investment would have a maximum 22.5% return.

* * *

Enron has strongly requested ML to enter into this transaction. Enron has paid ML approximately \$40 million in fees in 1999 and is expected to do so again in 2000.

¶742.8. Any doubt of McMahon's deep involvement in the Enron fraud is cast aside with these formidable – and unchallenged – allegations.

B. Olson

The allegations of Olson's accounting expertise and the "telling factual allegations" regarding her sale of stock while advising Enron employees to put all their 401(k) plan funds into Enron stock raise a strong inference of scienter, as the Court has already found. *See* March 25, 2003 Order at

12; ¶¶83q1-5. To counter these compelling charges, Olson reprises her failed objections to the Management Committee allegations and equates herself with the Andersen Individual Defendants. Motion at 28. But the Court has made clear: Olson, like the other Officer Defendants, "had intimate personal involvement in Enron's daily business operations, combined with long-term membership on the Enron Management, or Executive, Committee." March 25, 2003 Order at 5.

Olson tries to diminish the force of her profiteering by arguing she dumped her Enron stock after her tenure on the Management Committee expired, as if this absolves her from liability. *See* Motion at 28 n.20. But in sustaining the claims against Olson, the Court relied on more than her tenure on the Management Committee. The Court recognized that Olson's trading even sparked Congressional outrage:

After sitting on the Management Committee through 1998 and 1999, during which she purportedly learned and approved of numerous, repetitive fraudulent devices and continuances that sustained the Ponzi scheme, she "led the cheering rally for Enron stock" and publically advised Enron employees in December 1999 to put all of their 401k plan funds into Enron stock. Yet a couple of months later, she began quietly selling off her own Enron stock, including a sale of over \$1 million on February 18, 2000. Lead Plaintiff quotes a letter that ... [Representative] Waxman wrote to Senator Lieberman, stating that a videotape of Olson's testimony "seems to conflict with Ms. Olson's testimony that she would have advised Enron employees to diversify if the law permitted such advice" and "appears to cast Ms. Olson's personal financial transactions in a new light." Olson claimed that on the advice of her financial adviser in late 2000 and early 2001 she sold \$6.5 million of her Enron stock to diversify her portfolio.

March 25, 2003 Order at 11-12.

Olson's other arguments fail to persuade. In response to allegations she worked 15 years as an accountant before becoming head of Enron human resources, facts showing she "was no layman to the accounting manipulations" at Enron, March 25, 2003 Order at 12, Olson states she was a "non-financial accountant" and adds the Court has previously dismissed claims "against more sophisticated people." Motion at 29. Her response misses the mark. Even assuming the Court dismissed allegations case against "more sophisticated people" than Olson, this has no bearing on *Olson's* culpability.

Olson claims her fraudulent investment advice to Enron employees is irrelevant here because her statements were directed to *Title* plaintiffs. Motion at 29. Whether her statements also engendered claims under ERISA does not negate the strong inference of scienter drawn from

contrasting her advice to Enron employees with her subsequent sale of her own Enron shares, or immunize her from the federal securities laws. ¶¶83q2-5; *see SEC v. Zandford*, 535 U.S. 813, 825 (2002) ("the SEC complaint describes a fraudulent scheme in which the securities transactions and breaches of fiduciary duty coincide. Those breaches were therefore 'in connection with' securities sales within the meaning of §10(b).").

Olson also argues that allegations regarding her knowledge of the Watkins letter and failure to do "more than set up a meeting" with Ken Lay should not be considered. *See* Motion at 29. But Olson sold her own ESOP shares soon after learning about the explosive revelations in the letter. ¶83q.5.

C. Causey

The new allegations against Causey strengthen the strong inference that he engaged in securities fraud. Causey was integral in closing the bogus power swaps between Enron and Merrill Lynch, which Enron needed to meet analyst forecasts for fourth-quarter and year-ended 1999. ¶¶742.16, 742.18. Enron requested Merrill Lynch act as a strawman and "purchase" contracts based on the future revenues of an incomplete "peaker" power plant, with the promise Enron would ensure the contracts were repurchased or canceled in the future at a profit to Merrill Lynch. ¶742.17. Enron sought from Merrill Lynch the creation of \$60 million profit out of thin air, a deal with no economic purpose. *Id.* "***This was absolutely a sham transaction, and it was an 11th-hour deal We did this deal to get 1999 earnings,***" reported an Enron executive. ¶742.18. To close the deal, Causey assuaged Merrill Lynch executive's concerns over potential liability from the fraudulent swaps by stating in writing Enron did not rely on Merrill Lynch for accounting advice. ¶742.19. Causey argues this new allegation does not show fraud because "Enron relied on Andersen, and Andersen had approved the challenged transaction." Motion at 26. Causey was Enron's Chief Accounting Officer; one would think Merrill Lynch's apprehension in conducting the deal was certainly a red flag to Causey.

D. Whalley

Although not instructed to do so, Lead Plaintiff also added new allegations against Whalley. These allegations demonstrate Whalley's primary involvement in the bogus power swaps between

Enron and Merrill Lynch. ¶742.18. This new information demonstrates Whalley's control over one of the principal contrivances Enron used to manipulate its financial statements. *See id.*

"Even if [it] were true," contend the Officer Defendants, this additional information "would not imply fraud by Mr. Whalley." Motion at 31. But this information, coupled with the Lead Plaintiff's other allegations and the Court's Orders, certainly adds weight to the already strong inference of scienter found by the Court.

E. Other Defendants

Defendants Frevert, Kean and Koenig concede the Court did not require Lead Plaintiffs to supplement its allegations against them. *See* Motion at 31-34. Lead Plaintiff believes it will supplement its fraud allegations against these defendants to conform to evidence when their full participation in the Enron fraud is revealed. But at this time, an amendment was not required.

V. THE OFFICER DEFENDANTS CONTINUE TO ACCUSE THE COURT OF RELYING ON GROUP AND POSITION PLEADING, MOTIVE AND OPPORTUNITY, AND REWRITING PLAINTIFFS' ALLEGATIONS

A. The Court Did Not Rely on Group Pleading or Position Pleading

Despite its repeated pronouncements that it does not believe the group published presumption survived passage of the PSLRA, the Officer Defendants again, as they did in their motion for reconsideration, insist the Court has applied the presumption in sustaining the claims against them. Motion at 2, 4-7; *see* Individual Andersen Defendants' Order at 15-23. But this is simply not the case. Nowhere in the Court's Orders are written statements of Enron ascribed to the Officer Defendants based on their status as Enron officers alone.

Relatedly, movants reargue Lead Plaintiff is using "position pleading" to sustain its claims against them. This is untrue, for the Court rejects such allegations. "The Court agrees with Defendants that a person's position in the corporation's hierarchy or membership on a committee, or his receipt of substantial compensation, *by itself*, is insufficient to meet pleading requirements." April 22, 2003 Order at 6.

The positions of the Officer Defendants are just one small component of the scienter allegations. The First Amended Complaint also includes detailed allegations regarding the Officer Defendants' involvement with Enron's core businesses and risk management and approval of the

fraudulent SPEs and off-balance sheet transactions Enron used to hide its debt. ¶¶88, 395, 397, 435-500, 520-573. Plaintiffs are not merely "alleging scienter based solely on the[ir] positions as officers." *In re NetSolve, Inc.*, 185 F. Supp. 2d 684, 697 (W.D. Tex. 2001) (scienter found through allegations company was experiencing significant customer losses due to service problems that would have been obvious to company's top officers).

B. The Court Did Not Solely Rely on Motive and Opportunity Allegations

The Officer Defendants recycle rejected arguments regarding motive and opportunity. Motion at 8-10. The Officer Defendants divide the allegations into five categories and then proceed to restate arguments the Court has already found unpersuasive. Rather than parsing the pleading into discrete allegations as defendants have done, the Court, as is proper, viewed the claims against "each Enron insider in light of all the circumstances alleged in the complaint." April 24, 2003 Order at 4. And the Court found the claims sufficiently pled.

The complaint paints a picture of these individuals actively and knowingly participating in a corporate culture of brazen ambition toward the appearance of ever increasing success, which was simultaneously being undermined by their blatant self-dealing for personal enrichment. Their greed was rewarded by high salaries, extraordinary bonuses, and the exercise of Enron stock options or sale of company stock, the value of all of which was continuously inflated by their manipulation of Enron's financial reports.

April 24, 2003 Order at 7-8; *accord* April 22 Order at 6-8. The Court did not find mere motive and opportunity to commit fraud.

C. The Court's Decisions Are True to Lead Plaintiff's Allegations

The Officer Defendants continue to accuse the Court of rewriting plaintiffs' allegations regarding Enron's Management Committee. Motion at 7, 18 ("*Astonishingly*, the only place one finds those suggested allegations is in this Court's Order denying the Officer Defendants' motions to dismiss."); *see* ¶88. The Officer Defendants add nothing new to their argument, underscoring the vexatious nature of their motion. *Compare* Motion at 18 *with* April 22, 2003 Order at 3.

For purposes of brevity, Lead Plaintiff does not readdress each statement about Enron's Management Committee the Officer Defendants contend are unsupported by the pleadings but instead refers the Court to Lead Plaintiff's Opposition to Certain Officer Defendants' Motion for

Reconsideration and Clarification of the Court's Denial of Their Motions to Dismiss at 4-7. Incredibly, though, the Officer Defendants even repeat their objection to the Court's assertion they voted to sanction the fraudulent transactions while sitting on Enron's Management Committee, Motion at 18, which the Court derided as "meritless." April 22, 2003 Order at 4. As the Court stated, "'How else could the Management Committee approve the dubious partnership and SPE deals without its members casting a vote?'" *Id.* (quoting Lead Plaintiff's Opposition at 6).

Again, the Court should reject the Officer Defendants' contention the Court has crafted a pleading. For in "rephrasing the contentions of the complaint and in describing the larger picture the complaint portrays ... the Court has not misrepresented the pleadings." April 22, 2003 Order at 3.

The Officer Defendants yet again ask the Court to raise the legal standard (as if the PSLRA's standards were not high enough) and demand greater specificity in the Management Committee allegations due to Lead Plaintiff's purported "obfuscation" and "confusion in the pleadings." Motion at 15. "***Suppose that Plaintiff knows that the Management Committee did not vote*** on transactions and that it only met periodically only to provide senior Enron management with cursory, generalized updates of developments in Enron's many business units," insinuate the Officer Defendants. *Id.* "If so," they add, "the Court's results rests on an allegation the Plaintiff does not state or support[, and the] Court ... has written the Complaint it has sustained." *Id.* The Officer Defendants' innuendo is not a proper basis for their Motion.

Elsewhere the Officer Defendants accuse Lead Plaintiff of "misrepresent[ing] its own pleading" in its Opposition to Certain Officer Defendants' Motion for Reconsideration and Clarification of the Court's Denial of Their Motions to Dismiss. *Id.* First they charge, "contrary to its representations, Plaintiff had not 'identifie[d] various SPEs approved by' each Officer Defendant." *Id.* The Consolidated Complaint's allegations refute this accusation. Lead Plaintiff pleads the Officer Defendants, as members of the Management Committee, "***approved*** ... each of the partnership/SPE deals" and dealt "with the important issues facing Enron's business [such as Enron's] JEDI and LJM partnerships and the related SPEs." ¶¶88, 397. For each Officer Defendant, Lead Plaintiff provides their tenures on the Management Committee. ¶88. And Lead Plaintiff

chronicles the myriad fraudulent transactions Enron employed, and the Management Committee sanctioned, to distort its financial statements. *See, e.g.*, ¶¶88, 435-500, 520-573. These allegations are more than sufficient to identify which deceptive transactions were approved by each Officer Defendant.

Next they contend, contrary "to its counsel's representations, Plaintiff had not 'included minutes from various meetings' each Officer Defendant attended." Motion at 15. The Officer Defendants ignore the minutes included in the Appendix submitted in support of Lead Plaintiff's oppositions to the initial motions to dismiss. Counsel's representation was not deceptive, as the Officer Defendants argue.

The Officer Defendants also claim "confusion persists" with the Court. Motion 15-16. They point to two phrases in the Court's April 24, 2003 Order discussing waiver of Andrew Fastow's conflicts-of-interest by the Management Committee as support for their contention the Court misapprehends plaintiffs' allegations about the Management Committee. Motion at 16. The Court made these statements in the context of sustaining the allegations against Ken Harrison and Ken Lay. April 24, 2003 Order at 5-9, 37-42. And both of these defendants approved resolutions authorizing LJM transactions, and waiving Enron's conflict-of-interest policy for Fastow. *See, e.g.*, Appendix in Support of Plaintiffs' Oppositions to Motions to Dismiss, filed June 10, 2002, Ex. 24 at 1, 18. The Court does not confound the allegations against these defendants.

More importantly, Frevert, Kean, Koenig, Olson and Whalley never explain why an alleged mistake in the April 24 Order, released two days *after* their motion for reconsideration was denied, requires the Court to reverse its rulings against them. They point to no part of the Court's two opinions upholding Lead Plaintiff's allegations against them that even suggests the alleged waivers of conflict-of-interest policies by the Management Committee led the Court to deny their motions to dismiss. Indeed in the April 22 Order, the Court explains their motions to dismiss were denied due to "the totality of circumstances in the complaint." April 22, 2003 Order at 6. Any

misstatement about the Management Committee waiving the conflict-of-interest provision for Fastow "is immaterial to the substance of [the Court's] ruling."⁷ *Id.* at 2.

VI. THE ORDERS UPHOLDING THE CLAIMS AGAINST THE OFFICER DEFENDANTS COMPORT WITH OTHER DECISIONS IN THIS CASE

The Officer Defendants again protest their perceived disparate treatment when compared to the Outside Directors. Motion at 13 n.14, 17-18. The Court found the allegations against the Outside Directors, coupled with the minutes of related board and committee meetings suggested, at most, a "negligent failure to ask more questions or investigate the corporation's affairs in greater depth." *In re Enron Corp. Sec.*, 258 F. Supp. 2d 576, 2003 U.S. Dist. LEXIS 3786, at *127 (S.D. Tex. Mar. 12, 2003). The allegations against the Officer Defendants demonstrate greater culpability. April 22, 2003 Order at 6-8. As just one example, the Officer Defendants "were pocketing exceptional compensation, inflated bonuses, and stock options tied to the size of [the] bubble they were creating." *Id.* at 7-8. In contrast, the Court found no profiteering by the Outside Directors. *See* 2003 U.S. Dist. LEXIS 3786, at *127-*128. The decisions do not conflict.

The Officer Defendants equate themselves to defendant Joseph Hirko. But Hirko recently was indicted by a grand jury for securities fraud and insider trading in connection with his role in Enron. Motion at 16-17. The Court granted Hirko's *initial* motion to dismiss (we expect a different result with Hirko's second motion to dismiss) because "it found the circumstances surrounding Hirko's involvement in Enron suggest that he was distanced from the daily operations of the company and the alleged Ponzi scheme." April 24, 2003 Order at 17. Hirko, unlike the Officer Defendants, "never lived in Houston, where management of the day-to-day operations of Enron took place." *Id.* Based on this fact, the Court found significant that the "complaint does not allege that Hirko attended the meetings of the Management Committee in Houston." *Id.* at 18.

⁷ The Officer Defendants are even more captious in their other criticism of the Court. "The Court also confused the Management Committee for the Executive Committee of the Board," charges the Officer Defendants, "when it wrote 'the only exhibit in the record of the Management Committee minutes, *i.e.*, for a November 5, 1997 meeting [are] (#856 Ex. 21).'" Motion at 16. That the minutes are from the Executive Committee, not the Management Committee, at most calls into question just one of the myriad allegations on which the Court relied in upholding the claims. And this does not even apply to all the Officer Defendants, for Kean and Koenig attended the November meeting. *See* Appendix in Support of Plaintiffs' Oppositions to Motions to Dismiss, filed June 10, 2002, Ex. 21.

The former allegations against Hirko also reflected he "never received any bonuses, and left EBS before the fraud alleged in the complaint took place, and sold his Enron stock just prior to leaving the company in the spring of 2000." May 15, 2003 Order at 3. By contrast, contemporaneous with their approval of the very transactions used to distort Enron's financial statements, the Officer Defendants were engaging in massive profiteering.⁸ See April 22, 2003 Order at 7; *see also* April 24, 2003 Order at 13 (Buy), 25 (Causey), 29-30 (McMahon).

Frevert further likens himself to Hirko by claiming he too lived and worked away from Houston during part of the Class Period. Frevert claims to have "lived and worked [in London until] June 2000." Motion at 17, 31. First, Frevert's Forms 4 identify his address as 1400 Smith Street, Houston, Texas in filings for the periods October and December 1998, January and April 1999, and January and May 2000. Ex. B hereto. Second, Frevert's comparison fails because Hirko *never* lived and worked in Houston. April 24, 2003 Order at 17.

Nevertheless, many of Enron's more egregious transactions were approved by Frevert and other members of the Management Committee while Frevert was residing in Houston such as certain Raptor transactions, the sham Braveheart SPE, select Mahonia prepays, and the fraudulent Hawaii 125-0 SPE. ¶¶88, 480, 485-494, 521-526, 559, 564, 727, 731. Also, during his alleged time in London, Enron's London office was falsifying financial results by "increasing the curve on future-sales contracts," and deferred costs for Enron's international projects were "snowballing." ¶¶155(j), 214(e)(ii), (o). The "circumstances surrounding" Frevert's involvement in Enron do not "suggest that he was distanced from the ... Ponzi scheme" at any time. See April 24, 2003 Order at 17.

VII. LEAD PLAINTIFF PLEADS TEXAS SECURITIES ACT VIOLATIONS AGAINST BUY

⁸ The Officer Defendants also fail in equating themselves to James V. Derrick and Rebecca Mark-Jusbasche. See Motion at 7 & n.7. In contrast to the Officer Defendants, the allegations against Derrick focused on his "role in recommending that Vinson & Elkins LLP perform the internal investigation following Watkins' warning memorandum ...; the Court determined that this investigation ... did not constitute a §10(b) violation." See May 15, 2003 Order at 4. Unlike the Officer Defendants, who were "in charge of actually running" Enron and its associated SPEs, the Court found Mark-Jusbasche's "duties centered on operations of a subsidiary or an affiliate." March 25, 2003 Order at 6; ¶¶88, 395, 397.

Buy erroneously argues that "Lead Plaintiff simply has not met its burden to allege Mr. Buy to be a controlling person of Enron during 1998 when the disputed notes were issued and sold. On that basis, the Court should dismiss the Texas Securities Act claims against Mr. Buy." Motion at 22. Lead Plaintiff adequately alleges Buy was a control person in Enron in 1998, as he served on Enron's Management Committee in 1998. ¶88.

Any perceived inconsistency Buy claims must be resolved in Lead Plaintiff's favor on this Motion. Enron's Annual Report to shareholders for the year ended December 31, 1998, which shows Buy was a member of Enron's Management Committee for the fiscal year 1998, supports Lead Plaintiff's allegations. *See* Exs. 1 and 2 to Lead Plaintiff's Opposition to Certain Officer Defendants' Motion for Reconsideration and Clarification of the Court's Denial of Their Motions to Dismiss filed April 16, 2003. As this Court has already found with respect to Lead Plaintiff's claims under the federal securities laws, the members of the Management Committee acted as control persons of Enron. *See, e.g.*, April 24, 2003 Order at 16-17 ("Lead Plaintiff has also stated claims against Buy for controlling person liability under §20(a), based on his position as Chief Risk officer *and membership on key committees*"). The Court should deny Buy's motion to dismiss the Texas Securities Act claims against him.⁹

VIII. CONCLUSION

For the reasons above, the Court should deny Certain Officer Defendants' Motion to Dismiss First Amended Complaint. Should the Court grant the Motion, Lead Plaintiff requests leave to replead.

DATED: July 17, 2003

Respectfully submitted,

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⁹ Causey, who is also charged with violations of the TSA, does not contest the repleaded TSA claims against him. *See* Motion at 22-26.

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PROPOSED ADDITIONS TO PARAGRAPH 83

(i.1) In addition to serving on Enron's Management Committee and as Chief Risk Officer, Buy was present at Board meetings when Enron's business condition and SPE transactions were reviewed and approved. According to the Powers Report, members of management, including Buy, told the Board management was implementing an ever-increasing set of procedures and controls over certain related-party transactions. These included review and approval of all LJM transactions by Buy, Causey, and Skilling. *See* Powers Report at 10. Buy was charged by the Board of Directors with a "substantial role in the oversight of Enron's relationship with the LJM partnerships. He was to review and approve all transactions between them." *Id.* at 22. According to the Powers Report, Buy "apparently saw his role as more narrow than the Board had reason to believe, and did not act affirmatively to carry out (or ensure that others carried out) a careful review of the economic terms of all transactions between Enron and LJM." *Id.* at 22. But when Fastow's conflict of interest was waived, Board members and Finance Committee members were told at meetings on 10/11/99 and 10/6/00, that one of the major safeguards checking Fastow's power would be that all transactions involving Fastow, Enron and the LJM partnerships would be reviewed and approved by Buy and Causey.

(i.2) Buy was advised by the head of Enron's research group, which handled sophisticated option pricing and modeling issues, that the Rhythms NetConnection put-options strategy was questionable because: a) the transaction involved an obvious conflict of interest because of Fastow's personal involvement in LJM1; b) the pay-out was skewed against Enron because LJM1 would receive its benefit much earlier in the transactions; and c) the structure was unstable from a credit capacity standpoint because the SPE was capitalized largely with Enron stock. Powers Report at 84-

85.

(i.3) Additional evidence of Buy's participation in the fraudulent scheme is Buy's approval of Raptor I, as evidenced by an LJM2 Approval Sheet that he signed and an Enron Deal Summary, both of which were executed long after the Raptor I transaction had closed. Powers Report at 105. The approval sheet reported that Fastow protégé and Enron managing director, Michael Kopper, negotiated on behalf of LJM2. Buy also attended the 8/7/00 Finance Committee meeting when the Raptor IV transaction was presented to and approved by the Board. He also knew, but failed to inform the Board at the 2/01 review, that the Raptor vehicle then owed Enron approximately \$175 million more than it had the capacity to pay. *Id.* at 160.

(i.4) Buy knew that this figure grew to approximately \$500 million one month later and would have resulted in a charge against Enron's earnings in that quarter if not addressed. In response, Buy and others "restructured" the Raptor vehicles on 3/26/01 and transferred approximately \$800 million of Enron stock contracts. This was yet another act in which Buy participated to conceal Enron's disastrous financial state. In this instance, the massive charge to Enron's earnings that evolved from the "restructuring" precipitated Enron's final meltdown.

**Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)**

Explanation of Responses:

- (1) 401(k) plan uses unit accounting system which assumes that the Baron Corp. stock fund is fully invested in shares of Baron Corp. Common Stock (notwithstanding that the fund may hold some uninvested cash or shares of Baron Corp. Cumulative Second Preferred Convertible Stock of which each share is presently convertible into 13.632 shares of Common Stock). Reporting person is entitled to a distribution of the entire amount in shares of Baron Corp. Common Stock.
- (2) 20% of shares became exercisable on August 10, 1997, December 31, 1998, 1999, 2000, and 2001, respectively.

*** Intentional misstatements or omissions of facts constitute Federal Criminal Violations.
See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

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Signature of Reporting Person

11-6-AR Date

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ONE APPROVAL

OMB Number: 3235-0287
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STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940.

(Print or Type Responses)

1. Name and Address of Reporting Person*		2. Issuer Name and Ticker or Trading Symbol		6. Relationship of Reporting Person(s) to Issuer (Check all applicable)	
PREVERT	MARK A.	ENRON CORP. (ENE)		<input type="checkbox"/> Director <input type="checkbox"/> Officer <input checked="" type="checkbox"/> 10% Owner	
(Last)	(First)	3. IRS or Social Security Number of Reporting Person (Voluntary)		<input type="checkbox"/> Other (give title below) PRESIDENT AND CHIEF EXECUTIVE OFFICER, ENRON EUROPE, LTD.	
1400 SMITH STREET	(Middle)	371-62-8989			
		4. Statement for Month/Year			
		December 1998			
		5. If Amendment, Date of Original (Month/Year)		7. Individual or Joint/Group Filing (Check Applicable)	
				<input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person	
HOUSTON, TEXAS 77002-7369					

Table I -- Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

[illegible]

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly by the form filer. If the form filer is a partnership, report on a separate line for each class of securities beneficially owned directly or indirectly by the partnership. If the form filer is a corporation, report on a separate line for each class of securities beneficially owned directly or indirectly by the corporation. If the form filer is an individual, report on a separate line for each class of securities beneficially owned directly or indirectly by the individual. If the form filer is a trust, report on a separate line for each class of securities beneficially owned directly or indirectly by the trust. If the form filer is a partnership, report on a separate line for each class of securities beneficially owned directly or indirectly by the partnership. If the form filer is a corporation, report on a separate line for each class of securities beneficially owned directly or indirectly by the corporation. If the form filer is an individual, report on a separate line for each class of securities beneficially owned directly or indirectly by the individual. If the form filer is a trust, report on a separate line for each class of securities beneficially owned directly or indirectly by the trust.

SEC 14

30 69 2713

Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

Explanation of Responses:

(1) 401(k) plan was suit accounting system which assumes that the Baron Corp. stock fund is fully invested in shares of Baron Corp. Common stock (notwithstanding that the fund may hold some uninvested cash or shares of Baron Corp. Cumulative Second Preferred Convertible Stock of which each share is presently convertible into 13.452 shares of Common Stock). Reporting person is entitled to a distribution of the entire amount in shares of Baron Corp. Common stock.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

If space provided is insufficient, See Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form shows the currently valid OASIS No.

****Signature of Reporting Person**

Date _____

OMB Number: 3235-0287
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FORM 4

pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility
 Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

or Form 5 obligations may continue. See Instruction 1(b). **355**
(Print or Type Responses)

1. Name and Address of Reporting Person *

6. Relationship of Reporting Person(s) to Issuer
(Check all applicable) 10% Owner

____ Director ____ Other

____ Officer (give title below) X (specify below)

PRESIDENT AND CHIEF EXECUTIVE

OFFICER, EXXON EUROPE, LTD.

7. Individual or Joint/Group Filing (Check Applicable)

X Form filed by One Reporting Person

____ Form filed by More than One Reporting Person

<p>2. Issuer Name and Ticker or Trading Symbol</p> <p>ENRON CORP. (ENE)</p>	<p>4. Statement for Month/Year</p> <p>January 1999</p>	<p>5. If Amendment, Date of Original (Month/Year)</p>
	<p>3. IRS or Social Security Number of Reporting Person (Voluntary)</p> <p>371-62-8989</p>	

1. Name and Address of Reporting Person*		
FAEVERT	MARK A.	
(Last)	(First)	(Middle)
1400 SMITH STREET		
(Street)		
HOUSTON, TEXAS 77002-7369		

Table 1 -- Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Trans- action Date (Month/ Day/ Year)	3. Trans- action Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Owner- ship Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In- direct Bene- ficial Own- er- ship (Instr. 4)		
			Code	V	Amount				(A) or (D)	Price
Common Stock	01/04/99	M			7,560.00	A	\$59.5000	D		
Common Stock	01/04/99	S			7,560.00	D	\$59.5103	D		
Common Stock	01/04/99	M			20,435.00	A	\$59.5000	D		
Common Stock	01/04/99	S			20,435.00	D	\$59.5103	D		
Common Stock	01/08/99	S			20,000.00	D	\$63.0313	D	by 401(h) 21a in (1)	
Common Stock							645.23	I		
Common Stock							3,516.37	I	by 250P	

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly
 * If the form filed by more than one reporting person, see Instruction 4(b)(v).

(Over)
SEC 1474 (7-96)

**Table II – Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g.: puts, calls, warrants, options, convertible securities)**

Explanation of Responses:

(2) The option becomes exercisable in 20 percent increments on grant date and on each of the next four anniversary dates.

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FORM 4

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 4(b). (Print or Type Responses)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0287
Expires:	September 30, 1998
Estimated average burden hours per response:	0.6

1. Name and Address of Reporting Person*		2. Issuer Name and Ticker or Trading Symbol		6. Relationship of Reporting Person(s) to Issuer (Check all applicable)	
PREVETT MARK A.		ENRON CORP. (ENE)		<input type="checkbox"/> Director <input type="checkbox"/> 10% Owner <input type="checkbox"/> Officer <input checked="" type="checkbox"/> Other (specify below) PRESIDENT AND CHIEF EXECUTIVE OFFICER, ENRON EUROPE, LTD.	
3. IRS or Social Security Number of Reporting Person (Voluntary)		4. Statement for Month/Year		7. Individual or Joint/Group Filing (Check Applicable)	
371-62-8989		Apr 11 1999		<input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person	
5. If Amendment, Date of Original (Month/Year)					

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Interest (Instr. 4)
			Code	V Amount			
Common Stock	04/30/99	M		50,000.00	A		D
Common Stock	04/30/99	S		50,000.00	D		D
Common Stock	04/30/99	M		6,030.00	A		D
Common Stock	04/30/99	S		6,030.00	D		D
Common Stock	04/30/99	M		40,000.00	A		D
Common Stock	04/30/99	S		40,000.00	D		D
Common Stock	04/30/99	M		28,970.00	A		D
Common Stock	04/30/99	S		28,970.00	D		D
Common Stock							by 401(k) Plan (1)
Common Stock							by ESOP

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly by the form filer or more than one reporting person see Instruction 4(b)(v)

(Over)
SEC 1474 (7-96)

FORM 4 (continued)

Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	4. Transaction Code (Instr. 8)	5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)			6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Owned at End of Month (Instr. 4)	10. Ownership Form of Derivative Security: Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Title	Amount or Number of Shares				
Employee Non-Qualified Stock Option (right to buy)	\$36.7500	04/30/99	X				30,000.00	04/23/99	Common Stock	30,000.00			D	
Employee Non-Qualified Stock Option (right to buy)	\$36.7500	04/30/99	X				6,030.00	04/23/99	Common Stock	6,030.00		0.00	D	
Employee Non-Qualified Stock Option (right to buy)	\$36.7500	04/30/99	X				40,000.00	08/11/98	Common Stock	40,000.00			D	
Employee Non-Qualified Stock Option (right to buy)	\$36.7500	04/30/99	X				28,970.00	04/11/97	Common Stock	28,970.00		134,740.00	D	

Explanation of Responses:

(1) 401(k) plan uses unit accounting system which assumes that the Baron Corp. stock fund is fully invested in shares of Baron Corp. Common Stock (notwithstanding that the fund may hold some uninvested cash or shares of Baron Corp. Cumulative Second Preferred Convertible Stock of which each share is presently convertible into 13.632 shares of Common Stock). Reporting person is entitled to a distribution of the entire amount in shares of Baron Corp. Common Stock.

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

Note: File three copies of this Form, one of which must be manually signed.

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Signature of Reporting Person

5-3-99
Date

FORM 4

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b). (Print or Type Responses)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(e) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number:	3235-0287
Expires:	September 30, 1998
Estimated average burden hours per response	0.5

1. Name and Address of Reporting Person*		2. Issuer Name and Ticker or Trading Symbol		6. Relationship of Reporting Person(s) to Issuer (Check all applicable)	
FREVERT	MARK A.	ENERON CORP. (ENE)		<input type="checkbox"/> Director <input checked="" type="checkbox"/> Officer <input type="checkbox"/> Other (specify below) PRESIDENT AND CHIEF EXECUTIVE OFFICER, ENRON EUROPE, LTD.	
(Last)	(First)	3. IRS or Social Security Number of Reporting Person (Voluntary)		7. Individual or Joint/Group Filing (Check Applicable)	
1400 SMITH STREET		371-62-8989		<input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person	
(Street)		5. If Amendment, Date of Original (Month/Year)			
HOUSTON, TEXAS 77002-7369		02/07/00			
(City)	(State)	(Zip)			

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of In- direct Beneficial Ownership (Instr. 4)
			V	Amount (A) or (D)			
Common Stock	01/10/00	A	V	31,705.00	A	D	
Common Stock	01/20/00	X		60,000.00	A	D	
Common Stock	01/20/00	S		60,000.00	D	D	
Common Stock	01/21/00	X		30,000.00	A	D	
Common Stock	01/21/00	S		30,000.00	D	D	
Common Stock	01/24/00	X		60,828.00	A	D	
Common Stock	01/24/00	D		60,828.00	D	D	
Common Stock				215,149.00			by 401(k) Plan
Common Stock				8,473.59			(1)

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly * If the form filed by more than one reporting person, see Instruction 4(b)(v).

(Over)
SEC 1474 (7-96)

Table II – Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

Explanation of Responses:

(2) The option becomes exercisable in 20 percent increments on grant date and on each of the next four anniversary dates.

(3) The option becomes exercisable in 25 percent increments on grant date and on each of the next three anniversary dates.

- - On August 13, 1999, the common stock of Krypton Corp. split 2-for-1. The number of shares owned and the number of any options held at the end of the month have been increased to reflect this stock split. All pre-split option prices previously reported in Table II, have been adjusted downward by one half to reflect the affect of the stock split.

See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

If space provided is insufficient, See Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays the currently valid OMB Number.

75-200
Date

FORM 4

☐ Check this box if no longer subject to Section 16, Form 4 or Form 5 obligations may continue. See Instruction 1(b). (Print or Type Responses)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

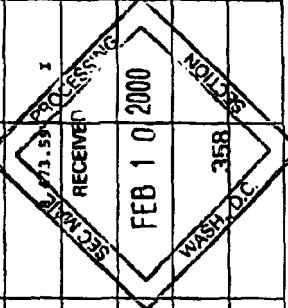
Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number: 3235-0287	Expires: September 30, 1998
Estimated average burden hours per response 0.5	

1. Name and Address of Reporting Person*		2. Issuer Name and Ticker or Trading Symbol		6. Relationship of Reporting Person(s) to Issuer (Check all applicable)	
PREVERT (Last)		ENRON CORP. (ENE)		Director _____ 10% Owner _____	
1400 SMITH STREET (Street)		3. IRS or Social Security Number of Reporting Person (Voluntary) 371-62-8989		Officer _____ X Other _____ (specify below) PRESIDENT AND CHIEF EXECUTIVE OFFICER, ENRON EUROPE, LTD.	
HOUSTON, TEXAS 77002-7369 (City) (State) (Zip)		4. Statement for Month/Year January 1999		7. Individual or Joint/Group Filing (Check Applicable) X Form filed by One Reporting Person Form filed by More than One Reporting Person	

Table I -- Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Ownership (Instr. 4)
			V	(A) or (D)			
Common Stock	01/10/00	A	V	\$1,705.00	A	D	
Common Stock	01/20/00	H		\$0,000.00	A	D	
Common Stock	01/20/00	S		\$0,000.00	D	D	
Common Stock	01/21/00	H		\$0,000.00	A	D	
Common Stock	01/21/00	S		\$0,000.00	D	D	
					215,142.00	D	
					\$73.55	I	by 401(k) plan (I)



Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly
* If the form filed by more than one reporting person, see Instruction 4(h)(v).

**Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)**

Explanation of Responses:

(2) The option becomes exercisable in 20 percent increments on grant date and on each of the next four anniversary dates.

On August 13, 1999, the common stock of Karon Corp. split 2-for-1. The number of shares owned and the number of options held at the end of the month have been increased to reflect this stock split. All pre-split option prices previously reported in Table II, have been adjusted downward by one half to reflect the effect of the stock split.

Sec 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

If space provided is insufficient, See Instruction 6 for procedure.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays the currently valid OMB Number.

Date _____

FORM 4

☐ Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. See Instruction 1(b). (Print or Type Responses)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP

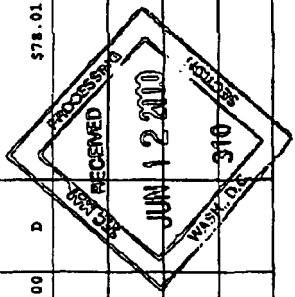
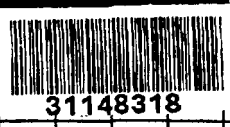
Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(f) of the Investment Company Act of 1940

OMB APPROVAL	
OMB Number: 3235-0287	
Expires: September 30, 1998	
Estimated average burden hours per response 0.5	

1. Name and Address of Reporting Person*		2. Issuer Name and Ticker or Trading Symbol		6. Relationship of Reporting Person(s) to Issuer (Check all applicable)	
FREVERT (Last)	MARK A. (First)	ENRON CORP. (ENE)		Director	10% Owner
1400 SMITH STREET	(Middle)	3. IRS or Social Security Number of Reporting Person (Voluntary) 371-62-8989		Officer (give title below) CHAIRMAN AND CEO OF ENRON	Other (specify below) NORTH AMERICA CORP.
	(Street)	4. Statement for Month/Year May 2000		7. Individual or Joint/Group Filing (Check Applicable) <input checked="" type="checkbox"/> Form filed by One Reporting Person <input type="checkbox"/> Form filed by More than One Reporting Person	
HOUSTON, TEXAS 77002-7369	(City)	5. If Amendment, Date of Original (Month/Year)			
	(State)				
	(Zip)				

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1. Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	3. Transaction Code (Instr. 8)	4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		5. Amount of Securities Beneficially Owned at End of Month (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Ownership (Instr. 4)
			V	Amount (A) or (D)			
Common Stock	05/11/00	M		3,780.00	A	D	
Common Stock	05/11/00	S		3,780.00	D	D	
Common Stock	05/11/00	M		52,512.00	A	D	
Common Stock	05/11/00	S		52,512.00	D	D	
Common Stock	05/11/00	M		43,708.00	A	D	
Common Stock	05/11/00	S		43,708.00	D	D	
Common Stock	05/11/00	S		43,708.00	D	D	
Common Stock					215,149.00	D	
Common Stock					8,489.31	I	by 401(k) Plan (1)
Common Stock					89.76	I	by ESOP



Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly * If the form filed by more than one reporting person, see Instruction 4(b)(v).

(Over)
SEC 1474 (7-96)

**Table II -- Derivative Securities Acquired, Disposed of, or Beneficially Owned
(e.g., puts, calls, warrants, options, convertible securities)**

Explanation of Responses:

(2) 25% of shares become exercisable on February 28, 2000, and 25% on January 18, 2001, 2002 and 2003, respectively.

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays the currently valid OMB Number.

5-73-00
Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO CERTAIN OFFICER DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT has been served by sending a copy via electronic mail to serve@ESL3624.com on this 17th day of July, 2003.

I further certify that a copy of the foregoing LEAD PLAINTIFF'S OPPOSITION TO CERTAIN OFFICER DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT has been served via overnight mail on the following parties, who do not accept service by electronic mail on this 17th day of July, 2003.

Carolyn S. Schwartz
United States Trustee, Region 2
33 Whitehall Street, 21st Floor
New York, NY 10004

/s/ Mo Maloney

Mo Maloney